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NO. 90-1621

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1990

VIRGINIA KNIGHT; EDMUND G. BROWN; WILSON RILES; RICHARD NEVINS; HOUSTON I. FLOURNOY; HAROLD J. POWERS,
Petitioners,

v.

BOARD OF ADMINISTRATION OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM,
Respondent.

REPLY BRIEF TO RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE THIRD APPELLATE DISTRICT

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REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Petitioners submit this reply brief in support of their petition for a writ of certiorari.

REASONS WHY THE WRIT SHOULD BE GRANTED

I

CERTIORARI SHOULD BE GRANTED BECAUSE ARTICLE III, SECTION 7 (PROPOSITION 57) VIOLATES THE CONTRACT CLAUSE OF THE FEDERAL CONSTITUTION

Petitioners contend that Proposition 57 enacted November 5, 1986, cannot constitutionally be applied to them, because the amendment withdraws benefits to which they earned a vested contractual right during their rendition of service. No comparable new advantages are included in the amendment which could offset the detriment they have suffered by replacement of a "fluctuating" system of benefit computation with a "fixed" system. They are therefore entitled to have their

basic retirement allowance computed on the basis of section 9359.1 as it read when they accepted their employment. Under the formula therein provided, petitioners' basic pension benefit is to be determined periodically on the basis of the current incumbent's salary.

1. THE DECISION OF THE LOWER COURT THAT RETIREES DO NOT HAVE A VESTED RIGHT TO THE RETIREMENT ALLOWANCE CALCULATED PURSUANT TO THE PARTICULAR FORMULA DURING THEIR RENDITION OF SERVICE IS PALPABLY ERRONEOUS AND MANIFESTLY WRONG

The decision of the Lower Court is riddled with inaccuracies, mistakes of fact and endless supposition which are not supported by any evidence filed with the Court. The September 27, 1989, letter to counsel requesting supplemental briefing is contained in Petitioners' Petition, Appendix G, 240g, 244g. The Court attempted to show the virtually unique character of the LRS, and claimed

the Legislature had expressly refused to appropriate funds to support the LRL. These assertions by the Court, and repeated by the Respondent, is contrary to fact and legal precedent. (See *Betts v. Board of Administration* 21 Cal.3d 939, Appendix H, 246h.)

The LRS is a defined benefit plan. The Contract Clause protects the "reasonable pension expectations" of members of the LRS, which are defined by the terms of the contract between the State and LRS members set forth in the LRS. This contract arose when members first began performing services as Constitutional officers. *Miller v. State of California* (1977) 18 Cal.3d 808, 817 ("upon acceptance of public employment, [one] acquire[s] a vested right to a pension based on the system then in effect.") (emphasis added).

Identifying the rights that vested in LRS members on their acceptance of employment, we find Sec. 9359.1(b) provided a basic retirement allowance based upon the salary of the incumbent office holder. The State made two types of promises to LRS members: First, it promised members that so long as they continued to serve and make the required contributions, they could earn the right to benefits payable in the future. Second, after members satisfied the service and contribution requirements of the LRS, the State promised them that upon retirement the benefits earned would be paid in full. See *City of Long Beach v. Allen* 143 Cal.App.2d 35, 38-39 (fully earned pension may not be changed to recipient's detriment).

The foregoing description of a LRS contract with a member is the argument

now advanced by Respondent in the pending case of *Legislature of the State of California, et al. v. March Fong Eu, Secretary of State, et al,* S019660 (1991). Respondent is taking the opposite position in the above matter to the arguments advanced herein as discussed briefly in the Brief of the Amicus Curiae.

The history of the LRS and other defined benefit plans under the State of California is correctly set forth in the comprehensive Report to Senate Committee on Public Employment and Retirement: California Public Retirement Plans, Volume I, An Overview of Plans and Comparisons, Volume 1, Bill Horne Associates (1978). The LRS is treated the same as all other defined benefit plans established by the Legislature. It points out that under the laws and decisions in

California, employees currently on the payroll are assured of receiving all pension benefits adopted to date, regardless of any future financial or other contingency that may be encountered by the public agency employer. At p. 44, the study observes:

> ". . . By law or legal precedent, **a formula for pension benefits once granted to a specific employee cannot be reduced.** A pension plan's commitment may extend in a few cases for nearly 100 years, from the point of employment to the death of the last survivor deriving benefits from the employee's membership in the system. . . " (Emphasis added.)

Historically, the LRS is neither unique nor has the Legislature refused to honor its legal obligation to fund the system as payments fell due.

2. WHEN PETITIONERS' CONTRACT OF EMPLOYMENT IS CONSTRUED ACCORDING TO ITS "JUST AND REASONABLE PURPORT", THEIR VESTED BASIC RETIREMENT ALLOWANCE IS CALCULATED UPON THE INCUMBENTS' COMPENSATION

Section 9359 specifically provided that any member credited with four or more years of service, "shall be retired and thereafter shall receive for life the retirement allowance provided in this chapter."

Any public official could and would reasonably expect that when he or she retired, the basic retirement allowance would be calculated based upon the current compensation of the incumbent.

3. THE CONTRACT CLAUSE SHOULD NOT BE CONSTRUED TO "PERMIT THE STATE TO ADOPT AS ITS POLICY THE REPUDIATION OF DEBTS OR DESTRUCTION OF CONTRACTS OR THE DENIAL OF MEANS TO ENFORCE THEM"

The arguments advanced by the Lower Court herein are radical innovations to permit the State to repudiate the debt owed to the petitioners. They will permit other public agencies means to seek to deprive public employees and

retirees their promised benefits violating the Contract Clause of the United States.

II

CERTIORARI SHOULD BE GRANTED BECAUSE THE PETITION PRESENTS SUBSTANTIAL FEDERAL QUESTIONS OF GREAT CONCERN TO PUBLIC EMPLOYEES EVERYWHERE

Congress has shown its concern for the pension rights of private employees by the enactment of ERISA. As was said in *Nachman Corp. v. Pension Benefit Guar. Corp.* (1980) 446 U.S. 359:

> "On September 2, 1974, following almost a decade of studying the Nation's private pension plans, Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, 29 U.S. C. Sec. 1001 et seq. As a predicate for this comprehensive and reticulated statute, Congress made detailed findings which recited in part, 'that the continued well-being and security of millions of employees and their dependents are directly affected by these plans.
>
> "One of Congress' central

> purposes in enacting this complex legislation was to prevent the 'great personal tragedy' suffered by employees whose vested benefits are not paid when pension plans are terminated. Congress found 'that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits.' ERISA Sec. 2(a), 88 Stat. 832, 29 U.S.C. Sec. 1001 (a). **Congress wanted to correct this condition by making sure that if a worker has been promised a defined pension benefit upon retirement--and if he has fulfilled whatever conditions are required to obtain a vested benefit--he actually will receive it.** (*Id.* at 374-375.) (Emphasis added.)

And quoting from your honorable Court in *Firestone Tire & Rubber Co. v. Bruch* (1989) 489 U.S. 101:

> "ERISA was enacted `to promote the interests of employees and their beneficiaries in employee benefit plans.' *Shaw v. Delta Airlines, Inc.*

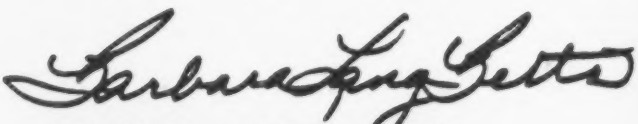
> 463 U.S. 85, 90 (1983), and 'to protect contractually defined benefits.' *Massachusetts Mutual Life Insurance Co. et al. v. Russell* (1985) 473 U.S. at 148. See generally 29 U.S.C. Sec. 1001 (setting forth congressional findings and declarations of policy regarding ERISA). (*Id.* at 113.)

Clearly, in light of Congress' stated intention to protect private employees' rights to their defined benefits, and this Court's emphasis on the protection of pension rights, substantial federal questions are presented in the Petition. The need to protect the security of public employees and officials to their defined benefit rights is equal to the need to protect private employees. This Court has the opportunity to preserve and protect public retirees' pension rights by granting certiorari and reversing the opinion of the Lower Court.

CONCLUSION

For the foregoing reasons, as well as those included in the Petition and Brief of Amicus Curiae, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,



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